

Att'y Dkt. No. US-1410

U.S. App. No: 09/841,609

**REMARKS**

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

The above amendments are fully supported by the specification and therefore do not constitute new matter. More specifically, support can be found on page 18, lines 17-24, and throughout the specification and original claims.

***Information Disclosure Statement***

Applicants would like to draw the Examiner's attention to an Information Disclosure Statement that was filed on the same day that the previous final rejection was mailed, October 1, 2003. Applicants respectfully request consideration of this IDS and return of the initialed PTO-1449, as the required fee under 37 CFR 1.17(p) was submitted. This is evidenced by the date-stamped receipt. A copy of the IDS, with the cited references and the stamped postcard are submitted herewith for the Examiner's convenience.

***Priority***

The Examiner has noted the priority claim, but states that no translation of the priority document has been received. The priority document is in English so no translation is required. The first page of the document is in Russian, however, and if the Examiner requires a translation of this page, we will be happy to provide this.

***The rejection of claims 4 and 7 under 35 USC §112, 2<sup>nd</sup> paragraph***

The Examiner has rejected claims 4 and 7 and 9-12 under 35 USC 112, 2<sup>nd</sup> paragraph for allegedly being indefinite for the term 'csc genes'. Although applicants do not necessarily agree with the Examiner's assertions regarding claims 4 and 7, applicants

Att'y Dkt. No. US-1410

U.S. App. No: 09/841,609

have amended the claims to state that the bacterium harbors the csc genes originating from particular *Escherichia coli* strains, and which comprise genes encoding for permease, invertase, and fructokinase. Clearly, the claim is now definite in that it identifies particular csc genes from particular *E. coli* species strains, all which are available via a deposit of the strains. Therefore, applicants assert that the claim is clear as to the definition of the particular csc genes. Therefore, applicants respectfully request that the rejection be withdrawn.

***The rejection of claims 4 and 7 under 35 USC §112, 1<sup>st</sup> paragraph***

The Examiner has rejected claims 4 and 7 under 35 USC 112, 1<sup>st</sup> paragraph as allegedly containing subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the relevant art that the inventors at the time the application was filed had possession of the invention. The Examiner has also rejected the claims under this section for non-enablement.

Claim 4 has been amended to state that the bacterium harbors the csc genes originating from specific *Escherichia coli* strains EC3132 or W3350csc. These strains are described in the specification on pages 7 and 18. These are known strains which are publically available (see deposit information on page 18), and are known to contain the csc genes, identified in the specification as the permease, fructokinase, invertase, and repressor. Clearly this amendment renders the scope of the claims such that there is no doubt that the claimed bacterium is adequately described and supported. One of ordinary skill in the art would be enabled to determine the genes which fall within the scope of the claims based on the specification and methods known to those skilled in the art. One of ordinary skill in the art would be enabled to make and use the invention based on the specific source of the csc genes available and fully described in the specification.

Applicants believe all the Examiner's concerns have been adequately addressed. For these reasons, applicants respectfully request that the rejection be withdrawn.

Att'y Dkt. No. US-1410

U.S. App. No: 09/841,609

***The rejection of claims 4 and 7 under 35 USC §102***

The Examiner has rejected claims 4 and 7 under 35 USC 102 over Bockmann et al. for the allegedly inherent teaching of accumulation of amino acids and presence of a permease, invertase, and fructokinase. Applicants have amended the claims to recite that the invertase, permease, and fructokinase are *csc* genes originating from *E. coli* EC3132 or W3350csc, and that the amino acids are produced in an amount higher than is produced from a bacterium not harboring the *csc* genes. Applicants assert that the claims as amended are free of the prior art for the following reasons.

The Examiner has stated that evidence showing that the introduction of *csc* genes into *E. coli* does NOT inherently result in increased production of amino acids would rebut this rejection. We submit herewith evidence that the JM109 strain used by Bockman et al. does not have an ability to cause accumulation of an amino acid in a medium when the strain is cultured in the medium because the strain has not been bred to produce an L-amino acid. We enclose herewith a copy of the ATCC catalogue, which shows that the JM109 strain (ATC53323) does not have a genotype which results in enhanced amino acid production, despite the presence of *csc* genes. Accordingly, the JM109 of Bockman et al. does not cause accumulation of amino acids regardless of the introduction of *csc* genes. Therefore, Bockman et al. does not inherently teach that introduction of the *csc* genes into *E. coli* increases amino acid production, since the evidence submitted shows directly to the contrary.

Therefore, claims 4 and 7 are free of the teachings of Bockmann et al.. Applicants respectfully request that the rejection be withdrawn.

Att'y Dkt. No. US-1410

U.S. App. No: 09/841,609

**Conclusion**

For at least the foregoing reasons, Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of the present patent application is therefore respectfully solicited.

If Examiner Kerr believes that a telephone conference with the undersigned would expedite passage of the present patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the undersigned respectfully requests that such fees be charged to the credit card listed on the attached PTO-2038.

Respectfully submitted,

By: \_\_\_\_\_

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